



City Council Chambers
3300 Capitol Avenue
Fremont, California

City Council

Bob Wasserman, Mayor
Bob Wieckowski, Vice Mayor
Anu Natarajan
Bill Harrison
Suzanne Lee Chan

City Staff

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Annabell Holland, Interim Assistant City
Manager/Parks & Recreation Director

Dawn G. Abrahamson, City Clerk
Robert Beyer, Interim Community Dev. Director
Harriet Commons, Finance Director
Marilyn Crane, Information Technology Svcs. Dir.
Mary Kaye Fisher, Interim Human Resources Dir.
Norm Hughes, City Engineer
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Lori Taylor, Economic Development Director
Elisa Tierney, Redevelopment Director

City Council Agenda and Report [Redevelopment Agency of Fremont]

General Order of Business

1. Preliminary
 - Call to Order
 - Salute to the Flag
 - Roll Call
2. Consent Calendar
3. Ceremonial Items
4. Public Communications
5. Scheduled Items
 - Public Hearings
 - Appeals
 - Reports from Commissions, Boards and Committees
6. Report from City Attorney
7. Other Business
8. Council Communications
9. Adjournment

Order of Discussion

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.



Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

Oral Communications

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. **Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak.** Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4080.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

Information

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. Council meetings are *open captioned* for the deaf in the Council Chambers and *closed captioned* for home viewing.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the City Council less than 72 hours prior to the meeting will be available for public inspection in specifically labeled binders located in the lobby of Fremont City Hall, 3300 Capitol Avenue during normal business hours, at the time the records are distributed to the City Council.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk
City of Fremont
3300 Capitol Avenue, Bldg. A
Fremont, California 94538
Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

AGENDA
FREMONT CITY COUNCIL REGULAR MEETING
NOVEMBER 23, 2010
COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A
7:00 P.M.

1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 *Motion to Waive Further Reading of Proposed Ordinances
(This permits reading the title only in lieu of reciting the entire text.)*
- 2.2 *Approval of Minutes –for the Special and Regular Meetings and Work Session of May 26, 2009, the Special and Regular Meeting of June 2, 2009, the Special and Regular Meetings of July 7, 2009, the Regular Meeting of July 14, 2009, the Regular Meeting and Joint City Council and Redevelopment Agency Meetings of July 21, 2009, the Regular Meeting and Special City Council and Redevelopment Agency Meetings of July 28, 2009, the Regular Meeting of September 8, 2009, the Regular and Work Session Meetings of October 6, 2009, the Regular Meeting and Work Session of October 20, 2009, the Special and Regular Meetings of October 27, 200, and the Work Session and Regular Meeting of November 17, 2009*
- 2.3 *Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for Planning Area 5 of the Pacific Commons Planned District P-2000-214, Governing Property Generally Located West of Interstate 880, South of Auto Mall Parkway, North of Curie Street and East of the Fremont Auto Mall*

RECOMMENDATION: Adopt ordinance.

- 2.4 *Second Reading and Adoption of an Ordinance of the City of Fremont Adopting a Third Amendment to the 2000 Amended and Restated Development Agreement between the City and Catellus Development Corporation Relating to the Pacific Commons Project in Southern Fremont*

RECOMMENDATION: Adopt ordinance.

- 2.5 *INITIATION OF GENERAL VACATION PROCEEDINGS TO ABANDON A 5,783 SQUARE FOOT PORTION OF RIGHT-OF-WAY AND PUBLIC UTILITY EASEMENT ON THORNTON AVENUE AT POST STREET, DALE HARDWARE (PLN2009-00258)*

Initiation of a Proceeding to Consider a General Vacation to Abandon a Portion of Thornton Avenue at Post Street in the Central Planning Area

Contact Person:

<i>Name:</i>	<i>Terry Wong</i>	<i>Jeff Schwob</i>
<i>Title:</i>	<i>Associate Planner</i>	<i>Planning Director</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4456</i>	<i>510-494-4527</i>
<i>E-Mail:</i>	<i>twong@fremont.gov</i>	<i>jschwob@fremont.gov</i>

RECOMMENDATION: Adopt a motion initiating a general vacation proceeding pertaining to the subject property and direct the Clerk to set and publicly notice a public hearing to be held on December 14, 2010.

- 2.6 *SABERCAT CREEK RESTORATION PROJECT*

Adopt a Mitigated Negative Declaration PLN2008-00114 and Mitigation Monitoring Plan and Approve the Concept Plan for the Sabercat Creek Restoration Project, City Project No. 8658(PWC)

Contact Person:

<i>Name:</i>	<i>Jeanne Suyeishi</i>	<i>Norm Hughes</i>
<i>Title:</i>	<i>Associate Civil Engineer</i>	<i>City Engineer</i>
<i>Dept.:</i>	<i>Community Development</i>	<i>Community Development</i>
<i>Phone:</i>	<i>510-494-4728</i>	<i>510-494-4748</i>
<i>E-Mail:</i>	<i>jsuyeishi@fremont.gov</i>	<i>nhughes@fremont.gov</i>

RECOMMENDATIONS:

Adopt a Resolution for the Sabercat Creek Restoration Project:

- 1. Finding that: (a) the Council has independently reviewed and considered the Mitigated Negative Declaration and other information presented; (b) the Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with State and local guidelines implementing CEQA; (c) there is no substantial evidence on the basis of the whole record before the Council that the Project as described in the Mitigated Negative Declaration will have a significant impact on the environment; and (d) the Mitigated Negative Declaration represents the independent judgment and*

- analysis of the City as lead agency for the Project.*
2. *Designating the City Engineer at the Engineer's Office at 39550 Liberty Street, Fremont, as the location and custodian of documents and records of proceedings on which this decision is based.*
3. *Adopting the Mitigated Negative Declaration and the Mitigation Monitoring Plan prepared for the Project.*
4. *Approving the Concept Plan for the Sabercat Creek Restoration Project, PWC8658.*
5. *Appropriating \$180,000 to 502PWC8658, for contributions to be received from Alameda County Flood Control District for the Sabercat Creek Restoration project.*

2.7 THE VILLAS AT FLORIO – 41482 FREMONT BOULEVARD

Public Hearing (Published Notice) to Consider the Planning Commission's Recommendation of a Rezoning to a New Preliminary and Precise Planned District (P-2010-272), a Private Street, and Vesting Tentative Tract Map No. 8054 Allowing a 22-Lot Townhouse Development on a Vacant 0.99-Acre Lot (PLN2010-00272)

Contact Person:

Name:	Stephen Kowalski	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4527
E-Mail:	skowalski@fremont.gov	jschwob@fremont.gov

RECOMMENDATION:

1. *Hold public hearing;*
2. *Adopt the Mitigated Negative Declaration and Mitigation Monitoring Program and find that this action reflects the independent judgment of the City of Fremont;*
3. *Introduce an ordinance that rezones the property and adopts the Preliminary and Precise Planned District and direct staff to prepare and the City Clerk to publish a summary of the ordinance;*
4. *Find that the Preliminary and Precise Plan for the project and Vesting Tentative Tract Map No. 8054 and the accompanying Private Street as depicted in Exhibits "C" and "D", respectively, fulfill the applicable requirements set forth in the Fremont Municipal Code;*
5. *Approve the Preliminary and Precise Plan as shown on Exhibit "C", and Vesting Tentative Tract Map No. 8054 and the accompanying Private Street as shown on Exhibit "D", based upon the findings and subject to the conditions of approval set forth in Exhibit "E".*

3. CEREMONIAL ITEMS

3.1 Resolution: Honoring Coach Pete Michaletos

3.2 SELECTION OF VICE MAYOR
Selection of Vice Mayor

Contact Person:

Name:	Dawn G. Abrahamson	Annabell Holland
Title:	City Clerk	Interim Assistant City Manager
Dept.:	City Clerk's Office	City Manager's Office
Phone:	510-284-4063	510-284-4005
E-Mail:	dabrahamson@fremont.gov	aholland@fremont.gov

RECOMMENDATION: Appoint Councilmember Suzanne Chan as the Vice Mayor for 2010-11.

4. PUBLIC COMMUNICATIONS

4.1 Oral and Written Communications

REDEVELOPMENT AGENCY – The Redevelopment Agency Board will convene at this time and take action on the agenda items listed on the Redevelopment Agency Agenda. [See separate agenda](#) (yellow paper).

PUBLIC FINANCING AUTHORITY – None.

CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

5. SCHEDULED ITEMS

5.1 PUBLIC HEARING, SECOND READING AND ADOPTION OF ORDINANCES ADOPTING AND AMENDING THE 2010 CALIFORNIA BUILDING STANDARDS CODES AND CERTAIN APPENDIX CHAPTERS AND ADOPTION OF SUPPORTING FINDINGS

Public Hearing, Second Reading and Adoption of Ordinances and Findings Adopting and Amending the 2010 California Building Standards Code and Adopting by Reference Certain Appendix Chapters of the 2010 California Building Standards Codes, and Making Conforming Changes to the Fremont Municipal Code, and Adoption of Resolutions Containing Supporting Findings and Determinations

Contact Person:

Name:	Steven W. Davis	Jay Swardenski
Title:	Building Official	Fire Marshal
Dept.:	Community Development	Fire
Phone:	510-494-4470	510-494-4222
E-Mail:	swdavis@fremont.gov	jswardenski@fremont.gov

RECOMMENDATIONS:

1. Hold public hearing.
2. Waive full reading and adopt ordinances adopting and amending the 2010 California Building, Electrical, Plumbing, Mechanical, Residential, Green Building, Existing Building, and Fire Codes.
3. Adopt a resolution making findings that the amendments to the 2010 California Building Standards Code are reasonable necessary because of local conditions
4. Adopt a resolution making the determination that the more restrictive energy regulations are cost effective.

6. REPORT FROM CITY ATTORNEY

6.1 Report Out from Closed Session of Any Final Action

7. OTHER BUSINESS

7.1 PLASTIC BAG REPORT

Report on Potential Regulation of Single-Use Bags

Contact Person:

Name:	Kathy Cote	Jim Pierson
Title:	Environmental Services Manager	Director
Dept.:	Transportation and Operations	Transportation and Operations
Phone:	510-494-4583	510-494-4722
E-Mail:	kcote@fremont.gov	jpierson@fremont.gov

RECOMMENDATION: Defer adopting a City ordinance to regulate single-use bags and instead participate in regional effort being coordinated by StopWaste.org

7.2 TEMPORARY REDUCTION OF DEVELOPMENT IMPACT FEES – MIDTOWN DISTRICT

(Published Notice) to Consider a Resolution to Collect Development Impact Fees at 50% of their Full Amounts in the Midtown District within the Center Business District until December 31, 2011

Contact Person:

Name:	Wayne Morris	Robert Beyer
Title:	Senior Planner	Interim Community Development Director
Dept.:	Community Development	Community Development
Phone:	510-494-4729	510-494-4767
E-Mail:	WMorris@fremont.gov	RBeyer@fremont.gov

RECOMMENDATION:

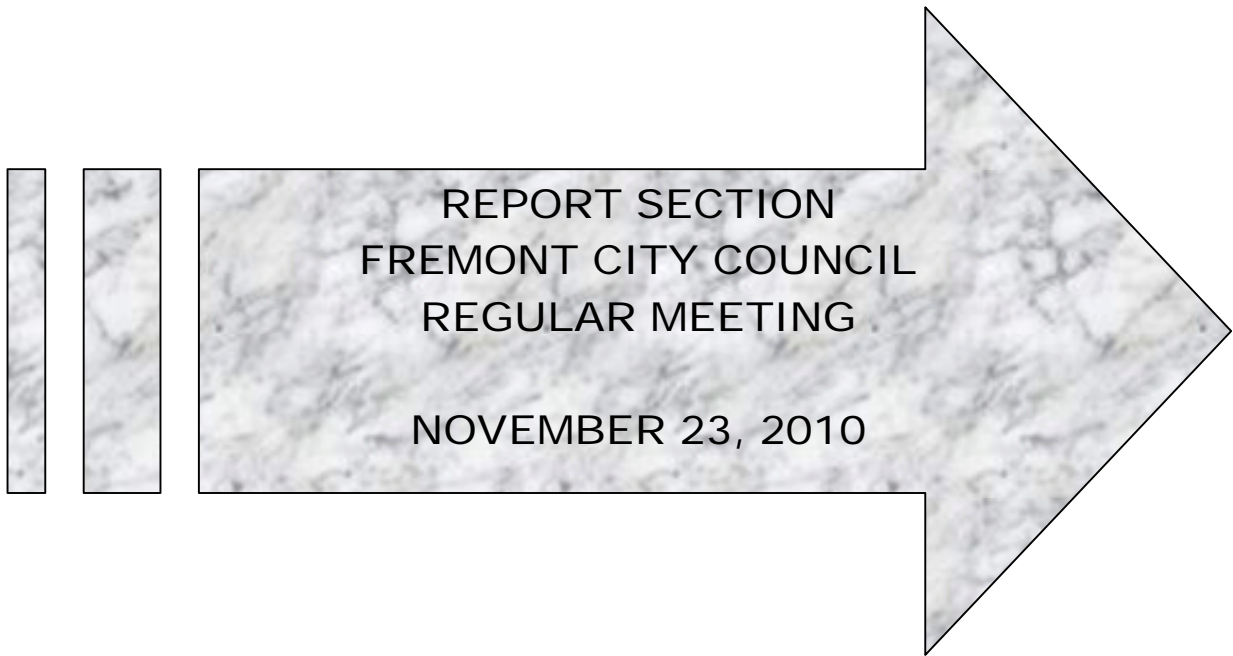
1. Find that this action is exempt from the California Environmental Quality Act per Guideline 15273, Rate Restructuring or Modification, and because a temporary reduction in fees collected is not associated with potentially significant effects upon the environment.
2. Adopt a resolution to collect Development Impact Fees at 50% of their full amounts in the Midtown District until December 31, 2011.

8. COUNCIL COMMUNICATIONS

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

9. ADJOURNMENT



REPORT SECTION
FREMONT CITY COUNCIL
REGULAR MEETING

NOVEMBER 23, 2010

- *2.3 Second Reading and Adoption of an Ordinance of the City of Fremont Amending the Precise Plan for Planning Area 5 of the Pacific Commons Planned District P-2000-214, Governing Property Generally Located West of Interstate 880, South of Auto Mall Parkway, North of Curie Street and East of the Fremont Auto Mall**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

- *2.4 Second Reading and Adoption of an Ordinance of the City of Fremont Adopting a Third Amendment to the 2000 Amended and Restated Development Agreement between the City and Catellus Development Corporation Relating to the Pacific Commons Project in Southern Fremont**

ENCLOSURE: [Draft Ordinance](#)

RECOMMENDATION: Adopt ordinance.

***2.5 INITIATION OF GENERAL VACATION PROCEEDINGS TO ABANDON A 5,783 SQUARE FOOT PORTION OF RIGHT-OF-WAY AND PUBLIC UTILITY EASEMENT ON THORNTON AVENUE AT POST STREET, DALE HARDWARE (PLN2009-00258)**
Initiation of a Proceeding to Consider a General Vacation to Abandon a Portion of Thornton Avenue at Post Street in the Central Planning Area

Contact Person:

Name:	Terry Wong	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4456	510-494-4527
E-Mail:	twong@fremont.gov	jschwob@fremont.gov

Executive Summary: Staff recommends that City Council adopt a motion initiating general vacation proceedings to abandon a 5,783 square foot portion of Thornton Avenue right of way at Post Street and direct the Clerk to set and provide notice of a public hearing to be held on December 14, 2010, following the provision of the public notice required by law. General vacation of a portion of Thornton Avenue has been requested by Dale Hardware in conjunction with the proposed expansion of their existing retail site in the Centerville Planning Area. General vacation of this portion of Thornton Avenue would eliminate excess pavement at the southeast return of Post Street to east bound Thornton Avenue. The purpose of this report is to set a public hearing for the vacation in accordance with Section 8320 of the Streets and Highway Code.

BACKGROUND: The proposed action will vacate 5,783 square feet of excess right of way, existing due to the realignment of Thornton Avenue between Fremont Boulevard and Paseo Padre Parkway that occurred in the 1970's. The area to be vacated consists of a traffic island and right turn lane for vehicular traffic traveling from Post Street to east bound Thornton Avenue as shown on the attached map.

In the 1970's, Thornton Avenue was widened on the north side, between Fremont Boulevard and Paseo Padre Parkway to 104 feet. Existing improvements at Thornton Avenue and Post Street were allowed to remain within the previous alignment of Thornton Avenue. This configuration resulted in an extra wide right of way with an oversized traffic island and additional pavement at the southeast return of Post Street to east bound Thornton Avenue.

The parcel located adjacent to the area proposed for vacation (37030 Post Street) contains a 6,216 square foot single-story commercial building on 0.68 acres, and was occupied by a pet supply store. Future plans for the adjacent parcel include combining the parcel with the existing Dale Hardware parcels, demolition of the existing building and construction of a larger parking lot and street landscaping for a future expansion of the Dale Hardware store. Street improvements for the realigned Thornton Avenue will be required under the Street Right-of-Way and Improvement Ordinance and will be installed with the Dale Hardware expansion. The street improvements include curb, gutter, sidewalk, street lighting, landscaping and a driveway for right turns in and out of Dale Hardware to Thornton Avenue.

DISCUSSION/ANALYSIS: The area proposed to be vacated consists of three areas as shown on the enclosure. Parcel A (186 square feet), and Parcel C (98 square feet) are owned by the City in fee.

Parcel C (5,499 square feet) is subject to an easement for roadway purposes. The owner of Dale Hardware is requesting the City sell Parcels A and C to him. Parcel B is owned in fee by Dale Hardware. After the street vacation, Dale Hardware's property will no longer be burdened by the roadway easement for public use.

PREVIOUS ACTIONS: On February 25, 2010 the City of Fremont Planning Commission found that the street vacation and disposition of surplus land adjacent to 37030 Post Street is in conformance with the Fremont General Plan.

FISCAL IMPACT: None.

ENVIRONMENTAL REVIEW: N/A

Initiation of General Vacation Proceedings: The merits of the proposed general vacation are not presently before the City Council. The Council will consider the merits and decide whether to order a vacation at a public hearing held on December 14, 2010.

ENCLOSURE: [Map of the portions of Thornton Avenue at Post Street proposed to be vacated](#)

RECOMMENDATION: Adopt a motion initiating a general vacation proceeding pertaining to the subject property and direct the Clerk to set and publicly notice a public hearing to be held on December 14, 2010.

***2.6 SABERCAT CREEK RESTORATION PROJECT**

Adopt a Mitigated Negative Declaration PLN2008-00114 and Mitigation Monitoring Plan and Approve the Concept Plan for the Sabercat Creek Restoration Project, City Project No. 8658(PWC)

Contact Person:

Name:	Jeanne Suyeishi	Norm Hughes
Title:	Associate Civil Engineer	City Engineer
Dept.:	Community Development	Community Development
Phone:	510-494-4728	510-494-4748
E-Mail:	jsuyeishi@fremont.gov	nhughes@fremont.gov

Executive Summary: The purpose of this report is to recommend that Council adopt a resolution approving the concept plan for the Sabercat Creek Restoration Project, City Project No. 8658 (PWC) as shown in Exhibit “B”, and adopting the Mitigated Negative Declaration (MND) (PLN2008-00114) and Mitigation Monitoring Plan for the project as shown in Exhibit “A”.

BACKGROUND: The Sabercat Creek Restoration Project area is unique as it is one of the last natural riparian corridors in Fremont and provides urban open space with a large portion of the project area publicly accessible by trail. Unfortunately, urbanization upstream has caused detrimental downstream changes in Sabercat Creek, including severe bank erosion in certain locations which threatens existing trail access and negatively impacts water quality. The Sabercat Creek Restoration Project will, among other things, stabilize sections of eroded creek bank through biotechnical bank stabilization and erosion control. The project will enhance the riparian habitat by removing exotic plants and reintroducing native plant species. The project will also extend the existing trail with a 1,250 foot connection between the two pedestrian pathways, install fencing to reduce cattle access to the creek, and add amenities along the trail including interpretive signage and picnic tables. The project is expected to be completed by December 2011.

The 2007/2008-2011/2012 CIP included \$500,000 for the Sabercat Creek Restoration Project from Urban Runoff funds. In June 2008, the City, in partnership with Alameda County Flood Control & Water Conservation District (ACFC&WCD), was awarded a \$1.17 million grant from the State of California – California River Parkways Grant program, which will provide the majority of the capital funding needed for the \$2.0 million restoration project. On July 28, 2009, City Council authorized staff to enter into a cost sharing agreement with Alameda County Flood Control to contribute \$180,000 towards this project for the engineering design and permit application services. There will be no General Fund impact.

This project was presented at the November 17, 2010 Recreation Commission Meeting as an informational item to provide a project overview and to provide the Commission with background information regarding the grant, previous Council action items and a project timeline.

DISCUSSION/ANALYSIS: The Sabercat Creek Restoration Project includes the following elements: 1) trail improvements; 2) new safety vehicle and ADA access west of Paseo Padre Parkway; 3) underpass trail connector at Paseo Padre Parkway; 4) installation of rock weirs at knickpoint erosion

areas; 5) installation of drain inlets and bioswales to control flow; 6) biotechnical bank stabilization to stabilize the creek trail; 7) fencing to reduce cattle access to the creek; and 8) riparian corridor enhancements.

The project will improve the existing trail by completing the unfinished segment, thereby allowing users to traverse the trail in both directions. A portion of the unfinished segment of trail will involve the construction of a 10-foot wide trail cut into the existing slope under the Paseo Padre Parkway overpass. The unfinished portions on either side of Paseo Padre Parkway will be widened and paved without the need for significant grading. The trail on the west side of Paseo Padre Parkway will also include safety vehicle and ADA access. Four areas along the creek trail have been identified with significant erosion that will be mitigated with biotechnical bank stabilization measures to create a safer environment for trail users, including the installation of keystone walls and rock rip rap along the foot of the bank. Three areas in the creek have significant knick points that will be mitigated with rock weirs to control excessive sediment discharge, bank erosion and channel migration. A riparian planting area has been identified on the bank of the creek near Paseo Padre Parkway. The exotic plants in this area will be removed and native plants will be introduced and fenced off from the cattle to promote the growth.

SFPUC – In order to construct the trail connector, a portion of the trail will cross over San Francisco Public Utilities Commission (SFPUC) property. SFPUC supports this project and drafted a letter that was included in the grant application to formally state SFPUC's intent to enter into a Revocable Permit with the City of Fremont to allow the trail extension across their property. As part of the permit process, SFPUC is requesting the City provide a resolution to document the City Council actions approving the concept plan and adopting the MND. This will facilitate their review and approval of the proposed project as a responsible agency under CEQA and allow the permit process to move forward.

FISCAL IMPACT: The adoption of the mitigated negative declaration and mitigation monitoring plan will have no impact on the City's General Fund. The design work will be completed by winter 2010/2011 and is being funded primarily by the Urban Runoff Clean Water Program. Construction will be funded primarily by the State grant. Once the project is completed, the City will establish a maintenance fund dedicated to providing at least 25 years of projected maintenance needs, as required by the California River Parkways Grant program, estimated to be \$400,000. Maintenance will be incorporated into the City's annual budget and funded through the Urban Runoff Fund.

ENVIRONMENTAL REVIEW: An Initial Study and Mitigated Negative Declaration have been prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The Initial Study determined the project could have potential adverse impacts on wildlife through the removal of the existing trees and other vegetation and from the general disturbance of the area, and on hydrology and water quality from temporary increases in sedimentation and runoff from areas in the riparian corridor that are disturbed by the project's construction activities (see Informational Item #1).

Based on the Initial Study, revisions to the proposed project were made to avoid or mitigate the identified impacts to a less-than-significant level, and a Draft Mitigated Negative Declaration and Mitigation Monitoring Plan was prepared and circulated for public review for 30 days, from July 13, 2009 through August 13, 2009 (see Exhibit "A"). No comments on the draft environmental document were received during this public review period. It should be noted that although the Draft

Mitigated Negative Declaration was prepared and circulated over a year ago, there have been no changes to the project scope or setting, or the circumstances under which the project will be performed, and thus no new avoidable significant effects have been identified that would cause the need to substantially revise and re-circulate the document for public review.

As part of the project, the City will implement the following mitigation measures to reduce the identified impacts the project may have on biological resources and hydrology and water quality to a less-than-significant level:

1. Biological Resources: Prior to commencement of construction-related activities, a survey of the project area during the proper blooming period of January through April for the presence of Western Leatherwood shall be conducted to determine the presence/absence of the species. If found to be present in the project construction area, a qualified botanist shall be retained to determine the proper measures necessary in the event the project impacts this species. Possible mitigation measures include avoidance of the plants, relocation of the trail around the plant's habitat, or collection and re-broadcasting of the plant's seeds to a nearby point down bank from its present location.
2. Biological Resources: Vegetation/tree removals that could directly destroy nests, eggs, and immature birds, and would remove future nesting habitats for birds, including sensitive species such as migrating songbirds, shall only occur outside of the breeding season which typically occurs between January and July. In the event removals are proposed during nesting season, a qualified biologist shall survey the area of work to determine that there are no birds present. No removals shall be permitted if species are found to be present.
3. Biological Resources: Surveys of the bridge substructure shall be conducted in late February before construction begins and before the nesting season is underway to determine if any colonially nesting bird species are establishing nests on the bridge substructure. Impacts to birds nesting on the bridge substructure can be avoided either by performing construction activities outside of the nesting area or before or after the nesting season has begun, or by placing barriers to prevent nesting on the substructure before nests can become established.
4. Biological Resources: Pre-construction surveys for nesting raptors shall be conducted. Suitable nesting trees within the areas where project-related activities will occur shall be surveyed if removal of the trees is to occur after January and prior to July. Raptor surveys shall also occur if grading is to occur within a 100-foot distance of any known nesting site. Surveys shall be performed prior to January to identify any potential nesting trees prior to the birds laying eggs. Once eggs have been laid, a buffer must be established around the nest site and the site must be protected until August 1 or until the young have fledged.
5. Biological Resources: Pre-construction surveys for the Western Pond Turtle shall be conducted. If the Western Pond Turtle is found to be present in the project area, consultation with the California Department of Fish and Game (CDFG) shall be required and a qualified biologist shall be retained to determine how and where the turtle(s) shall be relocated.

6. Biological Resources: Pre-construction surveys for the San Francisco Dusky-footed Woodrat shall be conducted to determine if this species occupies any of the area which will be impacted by implementation of the project. If this species is found to be present, a qualified biologist shall be retained to determine a program to relocate nests to nearby areas which will not be impacted by the project.
7. Hydrology and Water Quality: Final design and landscaping plans shall ensure soil stability features are incorporated into the design that may include revisions to location of the path improvements, type of improvements or materials between the path and creek, or landscape materials so as to limit long term potential erosion or debris collecting and falling into the creekbed.
8. Hydrology and Water Quality: Final construction drawings shall include stormwater pollution prevention plans (SWPPP) in accordance with Regional Water Quality Control Board best management practices to ensure stormwater runoff during the construction of the project does not cause erosion or transport sediment to sensitive areas. The SWPPP measures shall be in place on the construction site prior to commencement of work. The SWPPP at a minimum will include the following measures:
 - Temporary measures, such as flow diversion, temporary ditches, hay bales, and silt fencing;
 - Surface disturbance of soil and vegetation shall be kept to a minimum, and existing access and maintenance roads and/or paths shall be used wherever feasible;
 - Any stockpiled soil shall be placed and sloped so that it will not be subject to accelerated erosion;
 - Discharge of all project-related materials and fluids into the creek shall be avoided to the extent feasible by using hay bales or silt fences, construction berms or barriers around construction materials, or installing geofabric in the area of disturbance; and
 - After ground-disturbing activities are complete, all graded or disturbed areas shall be covered with protective material such as mulch or re-seeded with native plant species. The plan shall include details regarding seeding material, fertilizer, and mulching.
9. Hydrology and Water Quality: Final construction plans shall demonstrate sediment control measures for project work directly adjacent to the creek channel that adequately relieve potential increases in turbidity conditions from accidental disturbance to the creek during and after construction. Control measure placement shall consider seasonal changes in creek flows for wet and dry seasons. Ideally work will occur during the summer low-precipitation period when feasible. The control measures shall be installed as the first step in construction.
10. Hydrology and Water Quality: Temporary dewatering of the channel during construction to address sediment or erosion control shall not be permitted without a detailed study by a qualified biologist and potential consideration by a qualified hydrologist as to potential effects on special status plants and animals both upstream and downstream of the project site. In the event there would be significant negative impacts to special status species of harming their reproductive cycle or eliminating an example of the species, dewatering shall not be permitted.

Permits for the work to be done within the riparian corridor will also be required from the U.S. Army Corps of Engineers (Section 404 permit), Regional Water Quality Control Board (Section 401 permit), and the State of California Department of Fish and Game (Streambed Alteration Agreement).

PROJECT COSTS AND FUNDING: The following is a summary of estimated project costs:

Biological Consultant: Olberding Environmental	\$4,500
Design Consultant: Questa Engineering Corporation	\$130,000
Staff Costs (To Date)	\$91,000
Design Staff Costs and Consultant Management	\$60,000
Construction Inspection, Surveying and Administration	\$120,000
Construction	\$1,200,000
Project Contingency (20%)	\$240,000
Estimated Total Project Costs:	\$1,845,500

The estimated total project costs include contingencies. As more detailed plans are developed, the estimated costs will be refined. Estimated project costs also include incorporation of identified mitigation measures as discussed in this report.

Funding for the project is as follows:

Fund 123	Urban Runoff Program	\$500,000
Fund 525	California Rivers Parkway Grant	\$1,173,960
Fund 502	Estimated Contribution from ACFCF	<u>\$180,000</u>
	Estimated Available Funding Total:	\$1,853,960

ENCLOSURES:

- [Exhibit "A" - Draft Mitigated Negative Declaration and Mitigation Monitoring Plan \(PLN2008-00114\)](#)
- [Exhibit "B" - Sabercat Creek Restoration Site Plan](#)
- [Exhibit "C" - Resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring Plan for the Sabercat Creek Restoration Project](#)
- [Informational #1 - Initial Study](#)

RECOMMENDATIONS:

Adopt a Resolution for the Sabercat Creek Restoration Project:

1. Finding that: (a) the Council has independently reviewed and considered the Mitigated Negative Declaration and other information presented; (b) the Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with State and local guidelines implementing CEQA; (c) there is no substantial evidence on the basis of the whole record before the Council that the Project as described in the Mitigated Negative Declaration will have a significant impact on the environment; and (d) the Mitigated Negative Declaration represents the independent judgment and analysis of the City as lead agency for the Project.
2. Designating the City Engineer at the Engineer's Office at 39550 Liberty Street, Fremont, as the location and custodian of documents and records of proceedings on which this decision is based.

3. Adopting the Mitigated Negative Declaration and the Mitigation Monitoring Plan prepared for the Project.
4. Approving the Concept Plan for the Sabercat Creek Restoration Project, PWC8658.
5. Appropriating \$180,000 to 502PWC8658, for contributions to be received from Alameda County Flood Control District for the Sabercat Creek Restoration project.

***2.7 THE VILLAS AT FLORIO – 41482 FREMONT BOULEVARD**

Public Hearing (Published Notice) to Consider the Planning Commission's Recommendation of a Rezoning to a New Preliminary and Precise Planned District (P-2010-272), a Private Street, and Vesting Tentative Tract Map No. 8054 Allowing a 22-Lot Townhouse Development on a Vacant 0.99-Acre Lot (PLN2010-00272)

Contact Person:

Name:	Stephen Kowalski	Jeff Schwob
Title:	Associate Planner	Planning Director
Dept.:	Community Development	Community Development
Phone:	510-494-4532	510-494-4527
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Executive Summary: The applicant is requesting approval of a rezoning of a vacant 0.99-acre parcel to a new Preliminary and Precise Planned District (P-2010-272), as well as a Private Street and Vesting Tentative Tract Map (No. 8054) to create a 22-lot townhouse development. The proposed development would consist of four separate buildings, each measuring three stories and having a maximum height of approximately 36 feet. The townhouses would range in size from 1,229 to 1,818 square feet and have 2-3 bedrooms each. Staff recommends that the City Council introduce an ordinance rezoning the subject property and adopting the Preliminary and Precise Planned District and approve the Private Street and Vesting Tentative Tract Map as shown in Exhibits "C" and "D" based on the findings and subject to the conditions of approval contained in Exhibit "E".

BACKGROUND: The subject property previously housed two single-family homes dating back from the early 1900's, as well as a small service station constructed in the mid-1900's prior to the City's incorporation. All of these structures were eventually demolished, with the last being removed by the City in 1998 as part of a road-widening project for Fremont Boulevard.

On March 23, 2004, the City Council approved a General Plan Amendment re-designating the property from Medium Density Residential 15-18 Dwelling Units per Acre to Medium Density Residential 18-23 Dwelling Units per Acre, as well as a rezoning to establish a Preliminary and Precise Planned District allowing the development of 20 townhouse units over a podium parking garage (P-2003-18, also known as Carol Commons). The developer of Carol Commons never filed a subdivision map or building permit application for the project due the subsequent economic downturn, and the property was subsequently purchased by the present applicant. Because the present applicant is proposing a new design and two units more than what was approved for Carol Commons, a new Preliminary and Precise Planned District is required to supersede the previous Planned District approval.

On October 14, 2010 the Planning Commission considered the proposal and unanimously recommended Council approval with one additional condition of approval requiring construction of the masonry wall along the eastern property line prior to commencement of construction of the project to provide privacy and noise buffering for the neighbors residing next-door at 3883 Carol Avenue.

DISCUSSION/ANALYSIS:

Project Description: The applicant is proposing to construct a 22-unit townhouse development on a vacant 0.99-acre parcel. The proposal features four separate buildings, each measuring three stories and having a maximum height of 36 feet. The townhouses will range in size from 1,229 to 1,818 square feet and contain 2-3 bedrooms each. Two-car garages will be included with each unit, with the 2-bedroom units featuring a tandem parking configuration and the 3-bedroom units featuring a side-by-side parking configuration.

The units will be oriented outward with the garages oriented toward an inner “T”-shaped private street running the length of the development. Units 1 through 11 will face Carol Avenue and be accessible via the public sidewalk along that street, while units 12 through 22 will face the adjacent property to the north and be accessed by internal walkways (see Exhibit “C”). All units will have a partially enclosed front patio at ground level to provide each home with its own outdoor private space. The subdivision’s common area also includes a 1,427 square foot outdoor open space and a total of 11 guest parking spaces.

Off-site improvements will include public right-of-way improvements along the Carol Avenue property frontage, including curb, gutter, sidewalk, and landscape planter strips with irrigation and street trees. Full public improvements are already in place along the Fremont Boulevard property frontage, but the applicant will be required to repair and/or replace any damaged improvements and plant all new street trees for the length of the frontage.

General Plan Conformance: The existing General Plan land use designation for the project site is Medium Density Residential 18-23 Dwelling Units per Acre. The proposed density of 22 units per acre is consistent with the prescribed density of the General Plan. In addition, the proposal is consistent with the following goals of the Land Use, Health and Safety, and Housing Elements of the General Plan:

Land Use Goal 1: *New housing development while conserving the character of the City’s existing single-family residential neighborhoods.*

Housing Element Goal 2: *Ensure availability of high quality, well-designed and environmentally sustainable new housing of all types throughout the City.*

Housing Element Goal 3: *Encourage the development of affordable and market-rate housing in order to meet the City’s assigned share of the regional housing need.*

Housing Element Action 3.03-E: *Encourage a mix of affordable and market-rate housing near transit.*

Health and Safety Goal 8: *An acceptable noise level throughout the community.*

Analysis: The site’s location bounded by a major thoroughfare and a residential collector street on two sides and a three-story residential multi-family development directly to the north make it appropriate for a new townhouse development. The project will have its own direct access off Carol Avenue, so traffic entering and exiting the development will not have to pass through the adjacent residential neighborhood to the east. The proposed height and mass of the buildings are similar in scale to the existing townhouse development directly to the north, as well as some of the apartment buildings located east of the site

along Carol Avenue and Roberts Avenue, so the project will not adversely alter the existing character of the neighborhood.

The project features 2- and 3-bedroom units designed to cater to first-time homebuyers and smaller households. To comply with the City's Affordable Housing Ordinance, the applicant will be required to designate 15% of the units (or 3 units) as below market rate units (BMRs) or pay the required in-lieu fees. The site is less than ½ mile from the center of the Irvington District and the confluence of a number of AC Transit bus lines, as well as the future Irvington BART station. One bus line also currently serves Fremont Boulevard adjacent to the project site. The Housing Element encourages the establishment of high density development near transit corridors and within ½ mile of existing or planned transit stops, and the project would further this goal for the city.

The development of housing on the site adjacent to Fremont Boulevard and Carol Avenue would expose future residents to noise levels that exceed the thresholds prescribed by the Health and Safety Chapter of the General Plan for new residential development. However, a noise study was conducted as part of the project's environmental analysis which recommended the use of sound-rated construction materials for all units exposed to excessive noise levels. The recommendations of the study have been included as conditions of approval to ensure that all of the units are able to meet the standards prescribed by the General Plan (see Exhibit "E", Condition of Approval #33, Mitigation Measures 3 through 5).

Green Building Practices: Conventional building and remodeling practices use a significant amount of natural resources and generate large volumes of waste. Debris from building construction and demolition accounts for more than 21% of the materials disposed in Alameda County landfills. "Green building" means taking steps to create buildings that are safe and healthy for people and protective of our environment. While specific methods and products may vary from project to project, the basic principles of green building apply to all types of new construction and renovation. The project has been conditioned to achieve the minimum 50 points needed to be considered by the Alameda County Waste Management Authority as a green development, which embraces the nationally recognized U.S. Green Building Council's LEED™ (Leadership in Energy and Environmental Design) Green Building Rating System.

Irvington Concept Plan Conformance: The project conforms to the Irvington Concept Plan's goal to provide housing in a manner that respects central Irvington's role as an important commercial district in that it features three-story multi-family residential development which provides an appropriate transition between the outlying lower-density neighborhoods and the district's more intensive commercial core. In addition, it maintains the existing right-of-way improvements along Fremont Boulevard by taking its vehicular access off a less busy side street. In addition, the project is consistent with the Concept Plan's goal to provide an integrated, safe and well-designed pedestrian network in that it provides direct pedestrian access to the Fremont Boulevard sidewalk via a gated walkway to enable residents to walk to nearby retail and service uses in central Irvington.

Zoning Ordinance Compliance: The subject property is currently zoned as a Planned District for 20 residential units in a podium building with a common parking garage (P-2003-18). The applicant is proposing to rescind the existing Planned District and replace it with a new Preliminary and Precise Planned District (P-2010-272) for 22 townhouse units.

Building/Site Design: The project has been designed in a manner most closely resembling the R-3-23 Multi-Family Residence zoning designation. The following table shows how the proposal conforms to the development standards applicable to a new multi-family residential development in the R-3-23 zone:

<i>Standard</i>	<i>Requirement</i>	<i>Proposed</i>	<i>Complies?</i>
Front Setback	20 feet ¹	13 feet	Acceptable (see footnote ¹)
Rear Setback	10 feet	14½ feet	Complies
Interior Side Setback	10 feet	12 feet	Complies
Street Side Setback	20 feet ¹	15 feet	Acceptable (see footnote ¹)
Building Height	52 feet	36 feet	Complies
Maximum Lot Coverage	50%	34%	Complies
Common Open Space	1,350 sq. ft.	1,427 sq. ft.	Complies
Private Open Space	100 sq. ft.	±110 sq. ft.	Complies

As this table shows, the project conforms to all applicable R-3-23 zoning standards excepting the front and street side setbacks requirements. The proposed front setback adjacent to Carol Avenue is 7 feet less than the standard, while the proposed street side yard adjacent to Fremont Boulevard is 5 feet less than the standard. FMC Section 8-2754(d)(1) allows for reductions in these two setback requirements when the project is attempting to foster a pedestrian-scaled environment. Staff supports the proposed setback reductions on the grounds that allowing them will give the project a more pedestrian-friendly feel by bringing the units and their private outdoor spaces closer to the public realm while relegating parking facilities to the interior of the site. This would both contribute to an attractive residential neighborhood environment along Carol Avenue and increase safety along the two street frontages by bringing the living space of the units in close contact to the public realm thereby giving the project a strong street presence.

Parking: Parking for the project would exceed the minimum requirements for a new multi-family development. Pursuant to Section 8-22003 of the FMC [Required parking spaces by type of use], the minimum parking requirement is calculated based on the proposed land use, as follows:

<i>Land Use</i>	<i>Parking Ratio/Standard</i>	<i>Spaces Required</i>	<i>Spaces Provided</i>	<i>Degree of Compliance</i>
Multi-Family Dwellings w/ 2 or more bedrooms	1.5 spaces for residents per unit; 0.5 spaces for guests per unit	33 for residents; 11 for guests	44 for residents; 11 for guests	Exceeds for residents; complies for guests

As the table above shows, the project will meet the minimum parking requirement for guest parking and exceed the requirements for residential parking by 11 spaces. Each unit will contain a two-car garage so

¹ FMC Section 8-2754(d)(1) allows the front and street side setbacks to be reduced below their respective limits in order to foster a pedestrian-friendly environment or neighborhood-scaled setting.

all parking for residents will be covered, and the guest parking will be centrally provided just inside the entrance to the subdivision and adjacent to the common open space.

Design Analysis:

Site Planning: The proposed subdivision design incorporates a single “T”-shaped, double-loaded private street with the townhomes constructed in two parallel rows on either side of the street. The eleven units along the southern row are oriented towards Carol Avenue and take access from the avenue’s sidewalk, while the eleven units along the northern row are oriented northward and share access from an internal walkway leading out to Fremont Boulevard. Guest parking and a common outdoor open space bisect the two rows of units in the center of the development. Trash bin storage areas are provided in the garages of each unit, while personal storage spaces are provided on the ground floor under the first floor staircases.

To prevent unwanted cut-through foot traffic across the site, the project will have a locked gate at the access point from the Fremont Boulevard sidewalk that will be for resident access only. Public access to the site will be provided via a concrete walkway alongside the driveway off Carol Avenue. The ends of the private drive will be heavily planted with ornamental landscaping and will contain flow-through planters for stormwater runoff treatment. The property frontage along Fremont Boulevard will also be finished with a convex stucco wall topped with decorative metal railing and a wooden trellis to screen the private street from the boulevard.

Architecture: The project is a townhome-style development consisting of 4 separate buildings each with units sharing common walls. The applicant describes the architectural style of the project as modern Mediterranean, with elements such as hip and gabled roofs, recessed fascias and the use of exterior detailing, including window trim and faux shutters, wrought iron railings, and patios framed by columns having spherical capstones. Exterior materials include a smooth stucco finish with a cement plaster base, concrete tile roofing, and rigid foam moldings. Staff will work with the owner during building permit stage to achieve an attractive, comprehensive final colors and materials palette for the project.

Open Space/Landscaping: The site is currently vacant and does not contain any mature trees or plants. The proposal features a centrally located 1,427 square foot common outdoor open space for use by the project’s residents. The space will have two picnic tables, two barbecues, and be bordered by ornamental landscaping. The project’s frontage along Fremont Boulevard and entrance on Carol Avenue will also be fully landscaped, and new sidewalk planters will be constructed along the Carol Avenue frontage and be planted with street trees and a variety of plants.

Each unit will be provided with its own private outdoor patio directly outside the front door at the bottom of the stoop. The patios will each be enclosed with a short stucco wall capped with a decorative metal railing and capstones, and will measure approximately 100 square feet in area.

Site Circulation: Vehicular access to the development will be provided via a single driveway off Carol Avenue leading to a “T”-shaped private street (to be named Florio Terrace) in order to minimize curb cuts and maintain the existing streetscape along the busier Fremont Boulevard. The garages of each unit will open inward onto the private street, while the front entrances will open outward towards the northern and southern property lines. Pedestrian access to the entrances of each unit will be provided via

a new public sidewalk along Carol Avenue and an internal walkway along the northern property line having gated access to Fremont Boulevard at the northeast corner of the site.

Street Right-of-way Dedication and Improvements: The project has approximately 140 feet of frontage along Fremont Boulevard and 300 feet of frontage along Carol Avenue. The developer is required to dedicate right-of-way and install street improvements in accordance with the Subdivision Ordinance and the Street Rights-of-way and Improvement Ordinance. The following outlines the street right-of-way dedication and improvement requirements for the project:

- Fremont Boulevard is designated in the General Plan as a major thoroughfare. Right-of-way dedication is not required and the full street improvements along the project frontage have been installed as part of a City public works project. Minor street improvements will be limited to installation of street trees, repair of existing damaged portions of curb, gutter & sidewalk, utility connections, and installation of truncated domes on the existing accessible ramp at the Carol Avenue intersection.
- Carol Avenue is designated in the General Plan as a residential collector street. As part of the subdivision, the project will dedicate 5.25 feet of right-of-way along Carol Avenue frontage and will install pavement, City standard curb, gutter, five-foot sidewalk, landscaping, irrigation, street trees, tree well filters, asphalt overlay and utility connections.

Grading & Drainage: The subject site is currently undeveloped. The parcel generally slopes up to the east and away from Fremont Boulevard and Carol Avenue and is approximately 1-2 feet higher in the northeast corner than the surrounding abutting street grades. It is bounded by existing condominiums to the north and a single-family residence to the east.

Grading for the project consists of creating level pads for all garages at each cluster of townhomes. These garages are generally level with the walk-up stoops at the front entrances. Steps from the front door entrance meet the interior staircase from the garages at mid-landing. The applicant's engineer estimates the total project grading to be 568 cubic yards of cut and 124 cubic yards of fill resulting in approximately 692 cubic yards of dirt being moved of which 444 cubic yards of dirt will be exported.

Except for the entrance from Carol Avenue, the private street (Florio Terrace) drains to a concrete valley gutter in the center of the street. Runoff from paved and roof areas will be treated in landscape-based treatment measures and stormwater treatment vaults before connecting to existing public storm drain facilities in Fremont Boulevard. The details of the proposed on-site storm drainage system and connection to public main will be included with the improvement plans for the project. The drainage system shall be subject to approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

Water Service and Water System: The project proposes to install multiple taps along the existing water main in Carol Avenue to serve all the townhouses including connections required for one on-site fire hydrant and an irrigation service. Water meters for each unit, including meters for irrigation, will be located in banks of 4-5 meters each behind the curb along the Carol Avenue frontage.

Urban Runoff Clean Water Program: The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to

incorporate measures to prevent pollutants from being conveyed in storm water runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The project intends to meet the quantitative stormwater treatment requirements by installing five (5) below grade bio-retention planters to treat 53% of the total impervious area. The remainder of the site (46%) is being treated in a media based underground vault system. A small portion at the driveway entrance (1%) surface drains into Carol Avenue which is treated by tree well filters. Additionally, due to street widening along Carol Avenue, the applicant is installing two tree well filters to treat runoff along the Carol Avenue project frontage. The stormwater treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to final map approval.

As required by the Alameda Countywide NPDES Municipal Stormwater Permit, the property owners (or, collectively, their HOA) shall enter into a maintenance agreement for the long-term operation and maintenance of stormwater treatment measures. The agreement will require the ongoing maintenance of all the designated treatment facilities, including periodic replacement of media filter cartridges in the stormwater treatment vaults. The property owners shall also integrate a sidewalk and pavement sweeping program to help prevent debris and other pollutants from entering storm drains.

Geologic Hazards: The project site is within an area of potential Earthquake Induced Liquefaction Zone on the official Seismic Hazard Zone maps, released by the State Geologist. In accordance with the State law, the project geotechnical engineer prepared a seismic hazard report. The geotechnical report was peer-reviewed by the City of Fremont's consultant and approved by the City and filed with the State Geologist. The project improvements and building construction will conform to the recommendations of the seismic hazard report and peer review.

Affordable Housing: The development must adhere to the City's Affordable Housing Ordinance requirements as prescribed by Article 21.7 of the Zoning Ordinance. The applicant is required to either construct and dedicate three (3) units to the City's Affordable Housing Below Market Rate (BMR) program or pay the required in-lieu fees. Currently, the applicant plans to pay the in-lieu fees rather than construct the units as part of the development. In-lieu fees for the project are estimated to run between $\pm\$15.50$ and $\pm\$17.50$ per square foot of habitable floor area, resulting in a total required payment of more than \$500,000 toward the BMR program.

FINDINGS FOR APPROVAL:

Planned District: Pursuant to Section 8-21813 of the Municipal Code, the Planning Commission may recommend that the City Council adopt an ordinance establishing a new Planned District (or P district) if the following findings can be made:

- (a) The proposed P district, or a given unit thereof, can be substantially completed within four years of the establishment of the P district;
- (b) Each individual unit of development, as well as the total development, can exist as an independent unit capable of creating an environment of sustained desirability and stability or that adequate assurance will be provided that such objective will be attained; the uses proposed will not be

detrimental to present and potential surrounding uses, but will have a beneficial effect which could not be achieved under other zoning districts;

- (c) The streets and thoroughfares proposed are suitable and adequate to carry anticipated traffic, and increased densities will not generate traffic in such amounts as to overload the street network outside the P district;
- (d) The area surrounding said development can be planned and zoned in coordination and substantial compatibility with the proposed development;
- (e) The P district is in conformance with the General Plan of the City of Fremont; and
- (f) Existing or proposed utility services are adequate for the population densities proposed.

Discussion:

- (a) It has been the City's experience that the design and type of the subdivision and housing product being proposed can easily be completed within four years. There is nothing unusual about the site and no significant environmental constraints exist which should cause significant delays during construction of the project.
- (b) The entire project consists of 22 residential units all sharing a single private street for vehicular access. As such, it will function as an individual, fully independent unit. The units will be part of an HOA which will be responsible for maintaining the architecture, landscaping, and other on-site and off-site improvements in a fully functional and aesthetically pleasing manner. In addition, the project has been designed to minimize impacts on adjacent development through the provision of landscaped setbacks and to provide an attractive street presence through the orientation of the exterior units toward Carol Avenue.
- (c) The project is estimated to generate 11 additional vehicle trips during the PM peak traffic hour and 128 total daily trips. Fremont Boulevard currently has a PM peak hour volume of 1,794 trips and an average daily volume of nearly 19,000 vehicle trips. As such, the project would increase the PM peak volume by 0.61% and the daily volume by 0.68%. These increases would have a negligible impact on traffic levels of the street network in the area.
- (d) The adjacent lands to the north, east and west all are zoned for residential apartment development, and can therefore be developed with similar-sized buildings having similar setbacks. The proposed development has been designed to be fully independent through the provision of a private dead-end street, so it will not conflict with adjacent improvements or land uses, or alter or otherwise impact existing circulation routes.
- (e) The Planned District will conform to the General Plan in that the proposed density of 22 units to the acre is consistent with the land use designation of Medium Density Residential 18-23 Units per Acre, and components of the project comply with various goals and policies of the Land Use, Housing, and Health and Safety Chapters of the General Plan as discussed in the "General Plan Conformance" section, above.

- (f) There are existing water, sewer, and public storm drain systems serving the area which are capable of accommodating the proposed development. The project site is located upstream of Laguna Creek, a special flood hazard area, and development of the site must therefore be engineered to limit post-development runoff to equal or lesser volumes than current runoff levels during both the 10-year and 100-year storm conditions in order to avoid impacting the downstream flood hazard area.

Vesting Tentative Tract Map: In order to approve the proposed Vesting Tentative Tract Map, the subdivision must be found to be consistent with the General Plan, FMC Section 8-1418, and the Subdivision Map Act. Based on the analysis provided above, staff finds that the proposed vesting tentative map is in conformance with the General Plan, FMC Section 8-1418, and the Subdivision Map Act. However, if any of the following findings can be made, the vesting tentative tract map must be denied. Staff was not able to make any of the findings to deny the map, and therefore recommends approval of the application.

- a. The map fails to meet or perform one or more of the requirements or conditions imposed by the Subdivision Map Act and Chapter 1 of the Zoning Code (Subdivisions);
- b. The proposed subdivision, together with the provisions for its design and improvements, is not consistent with applicable general and specific plans;
- c. The site is not physically suitable for the type or proposed density of development;
- d. The design of the subdivision or the proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
- e. The design of the subdivision or the type or improvements is likely to cause serious public health problems; and
- f. The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.

Planning Commission Action: On October 14, 2010, the Planning Commission considered the item in a public hearing and voted unanimously to recommend approval of the project to the City Council with the added condition that the developer erect the masonry wall along the eastern property line prior to commencement of construction to protect the privacy of the next-door neighbors and buffer noise from construction activities. This condition has been added to those contained in Exhibit "E", attached.

Impact Fees: This project will be subject to citywide Development Impact Fees, including fees for fire protection, park facilities, park land, capital facilities and traffic facilities. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance. The applicant may elect to defer payment of the fees in accordance with the City's Impact Fee Deferral Program.

FISCAL IMPACT: Not applicable.

ENVIRONMENTAL REVIEW: An Initial Study and Draft Mitigated Negative Declaration (see Informational Item #1 and Exhibit “A”) have been prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The environmental analysis identified concerns regarding potential significant impacts to air quality and biological resources, as well as noise impacts from vehicular traffic on the dwelling units. The Draft Mitigated Negative Declaration includes mitigation measures, which, if implemented, would reduce the identified impacts to non-significant levels.

These measures include the implementation of dust control methods during grading and construction activities, pre-construction surveys for burrowing owl habitat not more than 30 days prior to commencement of ground-disturbing activities, and use of sound-rated construction materials for walls, and window and door openings that are exposed to high noise levels from vehicular traffic along Fremont Boulevard and Carol Avenue. The mitigation measures are included as conditions of approval for the project.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable for the entitlements being requested. A total of 189 notices were mailed to all owners and occupants of property within 300 square feet of the site. The notices were mailed out by the City Clerk’s Office on Friday, November 12, 2010. A Public Hearing Notice was also published by *The Tri-City Voice* on Tuesday, November 9, 2010.

ENCLOSURES:

- [Draft Ordinance](#)
- [Exhibit “A” – Draft Mitigated Negative Declaration and Mitigation Monitoring Program](#)
- [Exhibit “B” – Rezoning Map](#)
- [Exhibit “C” – Preliminary and Precise Planned District P-2010-272](#)
- [Exhibit “D” – Vesting Tentative Tract Map No. 8054 and accompanying Private Street](#)
- [Exhibit “E” – Recommended Findings and Conditions of Approval](#)
- [Informational #1 – Initial Study](#)
- [Informational #2 – Colored Renderings](#)
- [Informational #3 – Project Summary Data](#)

RECOMMENDATION:

1. Hold public hearing;
2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Program and find that this action reflects the independent judgment of the City of Fremont;
3. Introduce an ordinance that rezones the property and adopts the Preliminary and Precise Planned District and direct staff to prepare and the City Clerk to publish a summary of the ordinance;
4. Find that the Preliminary and Precise Plan for the project and Vesting Tentative Tract Map No. 8054 and the accompanying Private Street as depicted in Exhibits “C” and “D”, respectively, fulfill the applicable requirements set forth in the Fremont Municipal Code;
5. Approve the Preliminary and Precise Plan as shown on Exhibit “C”, and Vesting Tentative Tract Map No. 8054 and the accompanying Private Street as shown on Exhibit “D”, based upon the findings and subject to the conditions of approval set forth in Exhibit “E”.

3.2 SELECTION OF VICE MAYOR

Selection of Vice Mayor

Contact Person:

Name:	Dawn G. Abrahamson	Annabell Holland
Title:	City Clerk	Interim Assistant City Manager
Dept.:	City Clerk's Office	City Manager's Office
Phone:	510-284-4063	510-284-4005
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BACKGROUND: Chapter 1, Section F (2) of the City Council Handbook of Rules and Procedures (Vice Mayor Selection and Duties) provides: "The Councilmember who received the highest number of votes during the previous general municipal election shall be appointed Vice Mayor for the first year following the next general municipal election (the third year of that Councilmember's term)." As the Councilmember receiving the highest number of votes during the 2002 general municipal election, Bob Wasserman was eligible for appointment as Vice Mayor for 2004-05. However, since Bob Wasserman was elected to the office of Mayor during the 2004 general municipal election, a vacancy was created in the office of Vice Mayor for the 2004-05 term.

Chapter 1, Section F (3) of the City Council Handbook of Rules and Procedures (Vice Mayor Selection and Duties) provides: "If a vacancy is in the office of a Councilmember who has not yet served as Vice Mayor during his or her term of office, then the Councilmember next in the order of selection pursuant to the above section shall have their appointment as Vice Mayor advanced one year, notwithstanding that as the result of such a vacancy or prior or future vacancies, the order of selection will be modified with the effect that a subsequent Vice Mayor will be only in the second or first year of his or her term of office as a Councilmember." Because Councilmember Dominic Dutra had not yet served as the Vice Mayor and was the next in order of selection for that position, he was appointed as Vice Mayor for 2004-05, one year earlier than otherwise anticipated. Councilmember Steve Cho was appointed and served as Vice Mayor for 2005-06, as he received the highest number of votes during the previous general municipal election (2004). Councilmember Bob Wieckowski was appointed and has served as Vice Mayor for 2006-07, as he received the second highest number of votes during the 2004 general municipal election. Councilmember Bill Harrison was appointed and has served as Vice Mayor for 2007-08 as he received the highest number of votes during the 2006 general municipal election. Councilmember Anu Natarajan was appointed and has served as Vice Mayor for 2008-09 as she received the second highest number of votes during the 2006 general municipal election. Councilmember Bob Wieckowski was appointed and served again as Vice Mayor for 2009-10 as he received the highest number of votes during the 2008 general municipal election.

The order of selection of Vice Mayor has been modified based on the events described above and, therefore, Councilmember Suzanne Chan is eligible for appointment as Vice Mayor for 2010-11, as she received the second highest number of votes during the 2008 general municipal election.

ENCLOSURES:

- [Chapter 1, Section F \(2\) \(3\), City Council Handbook of Rules and Procedures](#)
- [Certificate of the Official Canvass of the General Municipal Election, November 2, 2008](#)

RECOMMENDATION: Appoint Councilmember Suzanne Chan as the Vice Mayor for 2010-11.

5.1 PUBLIC HEARING, SECOND READING AND ADOPTION OF ORDINANCES ADOPTING AND AMENDING THE 2010 CALIFORNIA BUILDING STANDARDS CODES AND CERTAIN APPENDIX CHAPTERS AND ADOPTION OF SUPPORTING FINDINGS

Public Hearing, Second Reading and Adoption of Ordinances and Findings Adopting and Amending the 2010 California Building Standards Code and Adopting by Reference Certain Appendix Chapters of the 2010 California Building Standards Codes, and Making Conforming Changes to the Fremont Municipal Code, and Adoption of Resolutions Containing Supporting Findings and Determinations

Contact Person:

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Executive Summary: This agenda item adopts and amends the 2010 California Building Standards Code and adopts specific findings related to local climactic, geological and topographical conditions that support the proposed local amendments.

BACKGROUND: The State of California adopts a set of new updated construction codes every three years referred to as the California Building Standards Code. This set of standards contains the California Administrative Code, California Building Code, California Electrical Code, California Mechanical Code, California Plumbing Code, California Energy Code, California Historical Building Code, California Fire Code, California Existing Buildings Code, California Green Building Code, and California Reference Standards Code. The purpose of this agenda item is to amend the 2010 California Building Standards Code that automatically becomes effective January 1, 2011 with certain administrative provisions and technical provisions based on Fremont's local conditions.

The City Council introduced the draft ordinance at the regular City Council meeting on October 26, 2010. The staff report, draft ordinances and proposed findings contained detailed descriptions of the specific local climactic, geological and topographical conditions that support the proposed local amendments. City Council provided direction to staff to adopt mandatory Tier 1 Green Building Code standards for new low-rise residential buildings as proposed, and to further study and engage the commercial development community in order to develop a recommendation for possible commercial Green Building Standards. City Council requested additional information regarding specific code changes regarding the height and number of stories permitted for structures and what options exist to increase the allowable height and number of stories for Type V (generally wood frame construction – the lowest level of construction) buildings.

Discussion: In order for the City to adopt local amendments, the City must adopt specific detailed findings justifying the need for the local amendments. The City must file the findings with the California Building Standards Commissions. In addition, because the proposed amendments to the Green Building Code would require more restrictive energy regulations, the city must determine that those regulations

are cost effective and file the determination together with supporting materials, with the California Energy Commission.

Resolution of Local Condition Findings: Health and Safety Code Sections 17958, 17958.5 and 17958.7 require the City Council to make findings regarding local climatic, geological and topographical conditions before adopting local amendments to the California Building Standards Code. The proposed findings are enclosed with this staff report.

The proposed Mandatory Tier 1 Green Building Code standards will require new single family dwelling buildings that are six-stories or less in height to be designed to use 15% less energy than the mandatory California Energy Regulations. In addition to making findings of local conditions justifying the amendments, under Public Resources Code section 25402.1(h)(2), the City must file with the state: (1) a study showing how the City determined energy savings, (2) a statement that local standards will require buildings to be designed to consume no more energy than permitted by the State Energy Code, and (3) a determination, made a public meeting of the City Council that the proposed, more restrictive, energy regulations are cost effective, and provide the basis of that determination.

In July 2010, Pacific Gas and Electric published a Climate Zone 3 Cost-Effectiveness Study prepared by Gabel Associates, LLC on behalf of all California Cities. The Study satisfies the California Energy Commission requirements and demonstrates it is cost-effective for new low-rise residential buildings to be constructed to use 15% less energy than the minimum California energy standards. Simple pay back periods range from 14 years to 28 years, depending on the size of the project, and the energy conservation features included. A copy of this report is attached.

The proposed findings specify the local climatic, geological and topographical conditions that support changes in the building codes. The proposed amendments to the building codes are based primarily on earthquake and climatic conditions.

The proposed findings specify the local climatic, geological and topographical conditions that support the proposed amendments to the fire code and specific changes related to the minimum requirements for the installation of Automatic Fire Sprinkler Systems in certain types of apartment buildings.

The proposed findings also define the basis for determining energy savings and cost effectiveness that support the proposed amendments to the green building code.

Building height and permitted number of stories: The 2010 Building Standards Code does not change the existing standards limiting the height or number of stories permitted in a building based upon the type of building construction. For Type V construction, the lowest level of construction, new buildings may be up to 70-feet tall and up to five stories in height. The specific limits vary depending upon the type of use and occupancy in the building. Buildings constructed of higher levels of construction are permitted to be higher and to contain a greater numbers of stories. The City is limited to adopting local amendments that are more restrictive than the basic code requirement; therefore, the City may not increase the permitted height or number of stories in a building beyond the maximum specified in the 2010 Building Standards Code.

6.1 Report Out from Closed Session of Any Final Action

7.1 PLASTIC BAG REPORT

Report on Potential Regulation of Single-Use Bags

Contact Person:

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Executive Summary: This report responds to a request from the City Council asking staff to identify options for regulating single use bags on retail providers within the City and analyze the benefits and implementation issues associated with the various options. Should the City Council wish to proceed, staff is recommending participating in a countywide effort that will be facilitated by StopWaste.org (also know as the Alameda County Waste Management Authority) and is scheduled to begin in spring 2011. This approach would allow the City to participate in a regional effort and would reduce City incurred costs for preparing the environmental review as well as responding to any legal challenges that may be filed by the plastics industry.

BACKGROUND: Plastic bags are a petroleum-derived product, which was first introduced by retail stores in the United States in 1975. Today single-use plastic bags are pervasive in the marketplace because they are lightweight and strong, inexpensive for retailers, and convenient for customers. A study commissioned by Green Cities California (a coalition of twelve local governments) cites that nearly 20 billion single-use plastic grocery bags are used annually in California. Unfortunately, less than 5% of plastic bags consumed are recycled. Some single use plastic bags end up in landfills; however, substantial quantities end up littering landscaping, streets, streams, storm drain systems and, ultimately, the ocean. While some are collected in recycling programs, plastic bags are difficult to recycle due to high contamination rates, the tendency of the bags to jam the screens used to separate materials at the recycling facilities, the low quality of plastic used in the bags and the lack of suitable markets for the recycled plastic resin.

Since single use plastic bags are so difficult to recycle the most effective means to reduce the litter impacts from them appears to be limiting their distribution at the point of sale by motivating consumers to select other alternatives such as single-use paper bags, single-use compostable bags or reusable bags. Each alternative has different considerations. While single-use paper bags are recycled at significantly higher rates than single-use plastic bags, production of a single-use paper bag has significantly larger greenhouse gas (GHG) emissions and results in greater atmospheric acidification, water consumption, and ozone production than production of a plastic bag. Single-use biodegradable bags are thought to be an eco- friendly alternative to HDPE plastic bags; however, they have greater environmental impacts at manufacture, resulting in more GHG emissions and water consumption than conventional plastic bags. In addition, biodegradable bags may degrade only under composting conditions; therefore, when littered, they will have a similar impact on aesthetics and marine life as single-use plastic bags. Reusable bags are the most environmentally desirable alternative but can be more inconvenient. They can be made from plastic or cloth and are designed to be used up to hundreds of times. They are initially more costly than single-use bags but assuming the bags are reused at least a few times they are usually less

expensive per use. Also, reusable bags have significantly lower environmental impacts, on a per use basis, than single-use bags.

Over the years, several bills regarding regulation of single-use bags statewide have been introduced. The last iteration was AB 1998 (Brownley) which would have encouraged the use of reusable bags by banning free distribution of single-use plastic bags at grocery stores, pharmacies and convenience stores while requiring a fee for single-use paper bags. This would have provided a consistent framework for all California jurisdictions, but unfortunately, the legislation failed to pass. While State legislation may be resurrected in the future, several California cities are moving forward independently. The plastics industry, represented by the Coalition to Save the Plastic Bag, has rigorously opposed efforts by local governments to regulate single-use plastic bags by filing legal complaints and lawsuits. The industry contention is that alternatives such as single-use paper or biodegradable bags have greater environmental impacts than single-use plastic bags and that cities need to conduct an environmental impact assessment before proceeding with any regulation. According to Green Cities California, the following jurisdictions have developed or are working on single-use bag ordinances but have not been able to implement them due to legal challenges, or have deferred action while completing legal and environmental review: Berkeley, City of Los Angeles, Los Angeles County, Malibu, Manhattan Beach, Oakland, Palo Alto, San Diego, San Jose, Santa Monica, Santa Clara County.

DISCUSSION/ANALYSIS: San Francisco was the first California jurisdiction to implement plastic bag regulations and passed the Plastic Bag Reduction Ordinance in November 2007, requiring supermarkets and retail pharmacies to use properly labeled compostable plastic bags certified by the Biodegradable Products Institute, 100% recycled paper bags made with at least 40% post consumer content, and/or reusable checkout bags. The San Francisco ordinance was not challenged. However, since that time, jurisdictions attempting to follow suit have had difficulty implementing legislation due to opposition from the plastics industry. To aid jurisdictions, Green Cities California has prepared some resources, including a model ordinance, which reflects the negotiated language of AB 1998 from many stakeholders, as well as a Master Environmental Assessment that can be used in the preparation of an EIR.

If the City Council wishes to proceed with regulating single-use bags, the following elements should be considered:

1. Approach – fee or ban: In other regions of the world, fees and bans on bags have resulted in dramatic drops in consumption. For instance, the Irish plastic bag tax immediately resulted in a greater than 90% reduction in use. Due to California law AB2449, no fee program on plastic bags can be introduced. However, bans on single-use plastic bags, as well as fees or bans on other single-use bags, may be implemented to minimize use. While consumers should have something available if they forget a reusable bag, it is not beneficial to encourage consumers to simply swap one single-use bag for another with different environmental impacts. Staff would recommend pursuing a ban on plastic bags with a fee on single-use paper bags or compostable bags. This would motivate consumers to use reusable bags whenever possible. This approach is supported by Green Cities California, which recommends a fee of not less than five cents (estimated cost of bag) per single-use bag with the proceeds kept by the store. Staff's current understanding is that a fee equivalent to the cost of the bag, charged only to consumers requesting the bag and kept by the store, would still comply with recently passed

Proposition 26. The City could opt to set a higher fee and have this remitted to the City. This would require establishing some administrative collection system and could be restricted by Proposition 26. Additional analysis would be needed before implementing a fee that exceeds the cost of providing the item to the consumer or that results in a revenue stream for the City.

2. **Businesses impacted:** Green Cities California recommends that the ordinance cover as wide a scope of stores as possible. The model ordinance language is written to apply to all retail establishments licensed to do business within the City with the exception of restaurants, take-out food establishments or other business that receive 90% or more revenue from the sale of food prepared or packaged at the establishment. This means that grocery stores, convenience stores and pharmacies would be subject to the ordinance. The City could opt to include fewer stores but this would be potentially less effective and inconsistent with ordinances adopted by other jurisdictions. Staff would recommend retaining the draft ordinance language.
3. **Environmental Review:** In the past, the plastics industry has successfully sued jurisdictions that have adopted ordinances that only banned plastic bags by arguing that such a law would increase the use of paper bags, which have their own environmental impacts. In response, the new generation of ordinances also imposes fees on paper bags, which may render the plastic industry's case irrelevant, since the use of both plastic and paper single use bags will be discouraged. Some cities have chosen to move forward with the new generation ordinance in conjunction with a Negative Declaration or adoption of a Categorical Exemption, claiming that the ordinance provides an environmental benefit. While several jurisdictions are moving forward with this approach, no ordinances have yet been implemented so it is unclear this approach will stand up to the legal challenge expected from the plastics industry. In response to CEQA requirements, some jurisdictions such as LA County, San Jose and Santa Monica have taken a more conservative approach and drafted Environmental Impact Reports (EIRs) which will be reviewed and adopted by their Councils in late 2010 or early 2011. Green Cities California commissioned a Master Environmental Assessment (MEA) on Single Use and Reusable Bags that summarizes existing studies on the environmental impacts of single-use plastic, paper, compostable and reusable bags, as well as the impacts of policy options such as fees and bans on bags. The document is a resource for local government that can be used in the preparation of EIRs to assess the potential impacts of such ordinances. Using this MEA can help reduce the cost and time of preparation of agencies' EIRs by reducing the need for independent research. Implementing the model ordinance without an EIR would be faster and less costly (less than \$10,000) but could have some legal risk. Preparing an Environmental Impact report could have less risk of legal challenge but will be more costly (\$100,000 - \$150,000) and is estimated to take 9-12 months.
4. **Approach:** The City could move forward with its own environmental review and City ordinance, participate in a regional countywide effort that is being facilitated by StopWaste.Org, or partner with one or several other jurisdictions to conduct the environmental analysis and implement an ordinance. The Stopwaste.org regional effort is scheduled to begin with the preparation of an EIR in spring 2011. Single-use bag regulation is one element of the EIR which will also include other components of implementing the agency's recently adopted Strategic Workplan. The EIR is expected to take nine months to complete with an Authority Board decision scheduled for December 2011. Since a number of Alameda County

jurisdictions have expressed strong interest in regulating single-use bags within the county, this process will likely result in a model ordinance that could be adopted by member agencies as early as 2012.

Staff recommendation: If the City Council wishes to pursue regulation of single-use bags, staff recommends participating in the regional effort being facilitated by StopWaste.org rather than moving forward with a City ordinance. Regional consistency would make compliance easier for impacted business and could provide an opportunity for jurisdictions to collaborate on enforcement mechanisms. This approach would reduce City incurred costs for preparing the environmental review as well as responding to legal challenges that could potentially be filed by the plastics industry. The City Council would still have the flexibility to implement its own ordinance if it does not support the model ordinance that comes out the regional effort. In this event, the City would still be able to take advantage of the EIR prepared by StopWaste.org unless it adopts something more restrictive than what was evaluated. In that case, some supplemental environmental review may be needed. It is also possible that state legislation could be resurrected over the next year. The Fremont Chamber of Commerce recently discussed the topic of single use bag regulation and conveyed the organization's concern about implementing a City ordinance. Their strong preference is for state legislation but barring that, the Chamber would support a regional approach. While participating in a regional effort has several advantages, staff acknowledges that it would delay implementation of an ordinance by approximately 6-12 months.

FISCAL IMPACT: The fiscal impact will vary greatly depending upon the amount of environmental review conducted, that amount of opposition from the plastics industry that is encountered and whether the City moves forward alone or participates in a regional effort. The cost could range from several thousand dollars to participate in a regional effort to \$150,000 - \$200,000 to move forward with an EIR and City ordinance. Staff would recommend funding this effort with the Integrated Waste Management budget rather than the General Fund.

ENVIRONMENTAL REVIEW: Not applicable at this time.

ENCLOSURE: [Green Cities California Model Ordinance](#)

RECOMMENDATION: Defer adopting a City ordinance to regulate single-use bags and instead participate in regional effort being coordinated by StopWaste.org

7.2 TEMPORARY REDUCTION OF DEVELOPMENT IMPACT FEES – MIDTOWN DISTRICT

(Published Notice) to Consider a Resolution to Collect Development Impact Fees at 50% of their Full Amounts in the Midtown District within the Center Business District until December 31, 2011

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Executive Summary: Staff is proposing to collect development impact fees (“impact fees”) at 50% of their full amount within the Midtown District until December 31, 2011 as part of a continuing effort to provide incentives to new development during the financial downturn. Currently fees in the Central Business District (CBD) are collected at 75% of their full amount and fees elsewhere in the City are collected at 90% of their full amount. This proposed action does not permanently change the impact fee amounts, but is one component of a temporary fee relief strategy intended to facilitate development within the District. This temporary fee reduction would stimulate development and allow staff time to complete a comprehensive impact fee analysis on the regular City schedule.

BACKGROUND:

Economic Downturn - On March 3, 2009, staff presented a broad local business stimulus package designed to support existing businesses and to provide incentives for establishment of new businesses during the economic downturn. On April 7, 2009, the City Council adopted Resolution No. 2009-17, which reduced impact fee payments within the Central Business District to 75% and elsewhere within the City to 90% of the full amount. Staff is not proposing any changes to the existing temporary reduction fee collections in place for the Central Business District outside of the Midtown District, where fees are currently being collected at 75% of their full amount, nor elsewhere in the City where fees are currently being collected at 90% of their full amount.

Project Description: The City charges impact fees, which were last updated effective March 2008, in order to fund new street improvements, public buildings, fire stations, and parks attributable to the impacts of each project. Staff proposes a draft resolution to collect impact fees at 50% of their full amount in the Midtown District (see map) until December 31, 2011. New projects and those already in the system that have not yet been issued building permits would be permitted to pay the modified fee in connection with building permits issued during this time period. If no further action is taken in the interim, the City would begin collecting the full fee again in the Midtown District (and the CBD and elsewhere in the City) on January 1, 2012.

Project Analysis: The proposed action is to temporarily collect City development impact fees at amounts less than those established in the comprehensive fee update approved by Resolution No. 2008-3, adopted on January 22, 2008. This action does not establish new impact fees or increase existing fees and, therefore, the requirements of the Mitigation Fee Act (Government Code Sections 66000 et. seq.)

and Municipal Code provisions in Title VIII, Chapter 9 for establishment of new or increased fees do not apply. By taking the recommended action, the City would choose to temporarily forego accepting 50% of the full amount of the impact fees in the Midtown District in order to provide an enhanced incentive for applicants to develop within the District. This will not affect the collection of fees by other agencies, such as the School District.

Fiscal Analysis: Reducing the collection of impact fees represents the most direct and substantial way the City has at its disposal to immediately improve the feasibility of current development activity within the Midtown District. Table 1 below illustrates the estimated effects on sample projects of the 50% lower fee collection rate with the current and previous impact fees.

Table 1: Sample Development Impact Fees

<i>Development Type</i>	<i>2008 Impact Fees*</i>	<i>75% current collection rate</i>	<i>Proposed 50% collection rate</i>
100,000 Sq. Ft. Office Building	\$ 1,247,700	\$ 935,775	\$ 623,850
200 Unit Residential Project	\$ 5,413,400	\$ 4,060,050	\$ 2,706,700

*City impact fees only.

Midtown District: While generally the impact fees collected are not segregated geographically (funds collected in the Midtown District are spent citywide), the District is a high priority, strategically important development area for the Council and community. In recognition of this, the City has made a concerted effort over the past ten years to plan and develop the Central Business District, which includes the area now known as the Midtown District.

The boundaries of this new Midtown District (see map) are co-terminus with the “Focus area” outlined in the Central Business District Concept Plan adopted in 2001. The vision of the Focus Area/Midtown District in the Central Business District Concept Plan is to create a hub of activity by having the area “contain a mix of uses including retail, offices, entertainment, open space, and cultural arts organized around a main street.”

The Midtown Community Plan & Design Guidelines currently being prepared is intended to further refine the vision and design concepts for the Central Business District Concept Plan as they relate to the Midtown District. The Plan will establish a coherent and consistent regulatory framework incorporating physical standards and design guidelines. Staff is tentatively scheduled to present the Midtown Community Plan & Design Guidelines to the City Council at a work session in late January 2011. Through the Midtown District Project discussions and work to date with the various consultants and the City’s Development Partner, TMG, it has become apparent that a few early development projects could dramatically increase the success of the District. Therefore, the proposed 50% impact fee reduction would indicate to the development community that the City is focused on developing and attracting businesses to the Midtown District.

Construction in the Midtown District will tend to be more expensive due to the City’s desire for an urban built form that will include higher densities, parking structures, enhanced streetscapes, public art, pedestrian connects/civic parks, and the need to reconstruct and modify existing streets. Staff feels that,

due to the cost of construction within the District, a further 25% reduction (therefore collecting 50% of impact fees within Midtown) may incentivize some developers to move forward with their projects.

Ongoing Review of Impact Fee Reduction: Following the adoption of the proposed resolution, staff will track the effects of this temporary reduction in fee collections (as well as the existing temporary reductions in the CBD and elsewhere in the City) over the coming months and year, bringing the impact fee collection rates back to Council for adjustment if necessary based upon development activity, the state of the economy, and the financial lending environment. In addition, staff anticipates that the City's development impact fees will be reviewed and updated following adoption of the new General Plan.

To the extent it is available, the City General Fund (or other non-impact fee sourced contributions) will be needed to cover the funding gap caused by temporarily collecting impact fees at a lower rate. However, to the extent that deficiencies in infrastructure result from project delay due to temporary collection of fees at lower rates, the City will account for and not pass on these deficiencies to future development projects when impact fees are updated. Because it is not known how many projects may take advantage of this temporary lower rate of collection, it is not possible to quantify the amount of any short fall (funding gap).

ENVIRONMENTAL REVIEW: The proposed temporary reduction in impact fees are exempt from the California Environmental Quality Act (CEQA) in accordance with CEQA Guideline 15273, Rate Restructuring or Modification, and because temporarily foregoing collection of a portion of impact fees due is not associated with potentially significant effects upon the environment.

ENCLOSURES:

- [Draft Resolution](#)
- [Midtown District Map](#)

RECOMMENDATION:

1. Find that this action is exempt from the California Environmental Quality Act per Guideline 15273, Rate Restructuring or Modification, and because a temporary reduction in fees collected is not associated with potentially significant effects upon the environment.
2. Adopt a resolution to collect Development Impact Fees at 50% of their full amounts in the Midtown District until December 31, 2011.

8.1 Council Referrals – None.

8.2 Oral Reports on Meetings and Events

ACRONYMS

ABAG.....	Association of Bay Area Governments	FUSD	Fremont Unified School District
ACCMA.....	Alameda County Congestion Management Agency	GIS	Geographic Information System
ACE	Altamont Commuter Express	GPA.....	General Plan Amendment
ACFCD	Alameda County Flood Control District	HARB	Historical Architectural Review Board
ACTA	Alameda County Transportation Authority	HBA	Home Builders Association
ACTIA	Alameda County Transportation Improvement Authority	HRC	Human Relations Commission
ACWD	Alameda County Water District	ICMA	International City/County Management Association
BAAQMD	Bay Area Air Quality Management District	JPA	Joint Powers Authority
BART	Bay Area Rapid Transit District	LLMD	Lighting and Landscaping Maintenance District
BCDC	Bay Conservation & Development Commission	LOCC	League of California Cities
BMPs	Best Management Practices	LOS	Level of Service
BMR	Below Market Rate	MOU	Memorandum of Understanding
CALPERS.....	California Public Employees' Retirement System	MTC.....	Metropolitan Transportation Commission
CBD	Central Business District	NEPA	National Environmental Policy Act
CDD.....	Community Development Department	NLC.....	National League of Cities
CC & R's	Covenants, Conditions & Restrictions	NPDES.....	National Pollutant Discharge Elimination System
CDBG	Community Development Block Grant	NPO.....	Neighborhood Preservation Ordinance
CEQA	California Environmental Quality Act	PC.....	Planning Commission
CERT	Community Emergency Response Team	PD	Planned District
CIP	Capital Improvement Program	PUC.....	Public Utilities Commission
CMA	Congestion Management Agency	PVAW	Private Vehicle Accessway
CNG.....	Compressed Natural Gas	PWC.....	Public Works Contract
COF	City of Fremont	RDA	Redevelopment Agency
COPPS	Community Oriented Policing and Public Safety	RFP	Request for Proposals
CSAC.....	California State Association of Counties	RFQ.....	Request for Qualifications
CTC	California Transportation Commission	RHNA	Regional Housing Needs Allocation
dB	Decibel	ROP.....	Regional Occupational Program
DEIR.....	Draft Environmental Impact Report	RRIDRO.....	Residential Rent Increase Dispute Resolution Ordinance
DO	Development Organization	RWQCB	Regional Water Quality Control Board
DU/AC.....	Dwelling Units per Acre	SACNET	Southern Alameda County Narcotics Enforcement Task Force
EBRPD	East Bay Regional Park District	SPAA	Site Plan and Architectural Approval
EDAC	Economic Development Advisory Commission (City)	STIP	State Transportation Improvement Program
EIR.....	Environmental Impact Report (CEQA)	TCRDF.....	Tri-Cities Recycling and Disposal Facility
EIS	Environmental Impact Statement (NEPA)	T&O	Transportation and Operations Department
ERAF	Education Revenue Augmentation Fund	TOD	Transit Oriented Development
EVAW	Emergency Vehicle Accessway	TS/MRF	Transfer Station/Materials Recovery Facility
FAR	Floor Area Ratio	UBC	Uniform Building Code
FEMA.....	Federal Emergency Management Agency	USD.....	Union Sanitary District
FFD.....	Fremont Fire Department	VTa	Santa Clara Valley Transportation Authority
FMC.....	Fremont Municipal Code	WMA	Waste Management Authority
FPD.....	Fremont Police Department	ZTA.....	Zoning Text Amendment
FRC.....	Family Resource Center		

**UPCOMING MEETING AND CHANNEL 27
BROADCAST SCHEDULE**

<i>Date</i>	<i>Time</i>	<i>Meeting Type</i>	<i>Location</i>	<i>Cable Channel 27</i>
November 30, 2010 (5 th Tuesday)		No City Council Meeting		
December 7, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 14, 2010	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 15, 2010 – January 3, 2011		Council Recess		
January 4, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 11, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
January 18, 2011	TBD	Work Session	Council Chambers	Live
January 25, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
February 15, 2011	TBD	Work Session	Council Chambers	Live
February 22, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 1, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 8, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live
March 15, 2011	TBD	Work Session	Council Chambers	Live
March 22, 2011	7:00 p.m.	City Council Meeting	Council Chambers	Live